

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BUTTE DIVISION

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|                          |   |                               |
|--------------------------|---|-------------------------------|
| ELDON HUFFINE,           | ) | Cause No. CV 09-63-BU-SEH-RKS |
|                          | ) |                               |
| Petitioner,              | ) |                               |
|                          | ) |                               |
| vs.                      | ) | FINDINGS AND                  |
|                          | ) | RECOMMENDATIONS               |
|                          | ) | OF U.S. MAGISTRATE JUDGE      |
| STATE OF MONTANA PRISON, | ) |                               |
| et al.,                  | ) |                               |
|                          | ) |                               |
| Respondents.             | ) |                               |

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On May 27, 2009, Petitioner Eldon Huffine filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. He did not pay the filing fee or move to proceed in forma pauperis. On August 12, 2009, the Court ordered him to file an Amended Petition and to either pay the filing fee or move to proceed in forma pauperis. Petitioner failed to respond to the Order.

The action should be dismissed because Petitioner has neither paid the fee nor moved to proceed in forma pauperis, despite an opportunity to do so. A certificate of appealability is not warranted.

Based on the foregoing, the Court enters the following:

**RECOMMENDATION**

1. The Petition (doc. 1) should be DISMISSED for failure to pay the filing fee or move to proceed in forma pauperis.
2. The Clerk of Court should be directed to enter by separate document a judgment of dismissal.
3. A certificate of appealability should be DENIED.

**NOTICE OF RIGHT TO OBJECT TO FINDINGS &  
RECOMMENDATIONS  
AND CONSEQUENCES OF FAILURE TO OBJECT**

Pursuant to 28 U.S.C. § 636(b)(1), Petitioner may serve and file written objections to these Findings and Recommendations within ten (10) business days of the date entered as indicated on the Notice of Electronic Filing. A district judge will make a de novo determination of those portions of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely

file written objections may bar a de novo determination by the district judge.

DATED this 30th day of October, 2009.

/s/ Keith Strong

Keith Strong

United States Magistrate Judge